IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

FRIDAY, THE 13TH OCTOBER 2006 / 21ST ASWINA 1928

Bail Appl..No. 6129 of 2006

CRIME NO.74/2006 OF KOLAVALLOOR POLICE STATION

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PETITIONER/ACCUSED 1 TO 3

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1. V.P.CHANDRAN, S/O.KELAN, AGED 43,
   RESIDING AT VATTAPOYILUMMAL, TRIPANGOTTUR AMSOM,
   POYILOOR DESOM, THALASSERY.

2. V.P.BALAKRISHNAN, S/O.KELAN,
   AGED 38, -DO- -DO-

3. MANU @ ANOOP P.P., S/O.KUNHIKUTTY,
   AGED 25, RESIDING IN PUTHENPURAYIL HOUSE,
   -DO- -DO-.

BY ADV. SRI.K.S.MADHUSOODANAN

RESPONDENTS: COMPLAINANT & FORMAL PARTY

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1. STATE OF KERALA TO BE REP.BY
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

2. STATION HOUSE OFFICER,
   KOLAVALLOOR POLICE STATION,
   THALASSERY.

BY PUBLIC PROSECUTOR JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 13/10/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.M.JAMES, J.

B.A. 6129/2006

DATED THIS THE 13TH DAY OF OCTOBER, 2006

O R D E R

The petitioners are accused 1 to 3, in crime No.74/2006 of Kolavalloor Police Station, for the offence punishable under Sections 341, 323 and 324 IPC read with Section 34 IPC.

2. The learned counsel submits that the Sessions Court, Thalassery, had dismissed the prayer for an order, under Section 438 Cr.P.C., on the ground that the investigation is not over. The offence under Sections 341, 323 and 324 IPC are bailable. Though the Code of Criminal Procedure (Amendment) Act 2005, Act 25 of 2005, had been implemented from the appointed date, 23.6.2006, all the provisions contained thereunder, had not been brought into force. The gazette of India Extra ordinary, dated 21.6.2006 contains S.O.No.923(E), notifying that though 23.6.2006 is appointed as the date on which the provisions of Act 25 of 2005 would come

into effect, the provisions of Sections 16, 25, 28(a), 28(b), 38, 42(a), 42(b), 42(f)(iii) and (iv) and 44(a) have been excluded.

3. Under Section 42(f)(iii) against Section 324 IPC, in fifth column of First Schedule of Cr.P.C., the word 'bailable' is deleted and 'non bailable' is included. However, because of the non implementation of Section 42(f)(iii) of the Code of Criminal Procedure (Amendment) Act, 2005, the offence under Section 324 IPC still continues to remain as bailable.

4. The learned counsel Mr.K.S.Madhusoodanan submits that there is a doubt in this regard at least in some Courts. Therefore, Section 324 is considered as non bailable and bail is being refused. The counsel cites the dismissal of the application, under Section 438 Cr.P.C., Crl.M.C.No.1425/2006 dated 27.9.2006, by the Sessions Court, Thalassery, as an example.

5. In the above facts situation, I direct the petitioners to appear before the Lower Court and the learned Magistrate shall allow them to be on bail, on the

application(s) that may be filed by them.

6. In order to avoid further difficulties that may arise in the dispensation of justice, in similar matters, communicate this order to all the Magistrate Courts, so that the doubts, if any, could be cleared.

The application is disposed of as above.

J.M.JAMES
JUDGE

mrcs